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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,239	05/17/2001	Brett D. Ritter	31919.3993	8281

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EXAMINER

STASHICK, ANTHONY D.

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/786,239

Applicant(s)

RITTER ET AL.

Examiner

Anthony D Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 6 is/are rejected.
- 7) ☒ Claim(s) 3-5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. A noted in applicant's response to the restriction requirement dated May 6, 2002, the claims that should have been of record in the US National application were claims 1-6 of the PCT application PCT/US99/20297. Since these were the claims that the applicant believed were of record in the application and should have been present in the National stage application, the restriction requirement is hereby vacated and an Office action on the merits of claims 1-6 as finally presented in the PCT application follows. These claims coincide with the copy of the claims sent in by the applicant in the response to the restriction requirement. To place the application in the condition in which the applicant believes the claims should have been originally presented, the attached copy of the claims will be entered as a preliminary amendment so that claims 1-6, as presented in the PCT, will be the only claims currently pending with all other claims cancelled as noted in the PCT Application.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: reference numbers 158 in Figure 8 and reference number 13 in Figure 1. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference number 63 as recited on page 10, line 5 and reference number 187 as recited on page 13, line 10. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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*Specification*

4. The disclosure is objected to because of the following informalities: reference number 187, recited on page 13, line 10 is not located in any of the Figures as recited. Also, reference number 63 as recited on page 10, line 5 is also not located in any of the Figures. Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 contains the phrase "said strap assembly" in line 2 of the claim which renders the claim so. This should read --said X-strap assembly...--. Also, line 7 of claim 1 contains the phrase 'across the instep from said instep from said first side... which also renders the claim vague and indefinite. It is not clear what is meant to be encompassed by this claim language. Claim 2, lines 5-6 contains the phrase "said strap". This should be phrased as --said instep strap-- to keep the claim language consistent with that language already used in the claim and to keep it clear as to what strap the applicant is referring. The same holds true for line 12 of claim 1 wherein "said strap for adjusting said strap" should be --said instep strap for adjusting said instep strap--.

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Courian 4,843,736.

Courian '736 discloses all the limitations of the claim including the following: an X-strap assembly for securing an article of footwear to the instep of a user's foot 17; the footwear having a sole 12 and a channel 22 through the sole; the strap attached at its respective ends 23 to medial and lateral heel sides (see Figure 1) of the footwear; the strap having a first portion extending in a forward direction transversely across the instep from a first side of the footwear to a second side of the footwear (portion of the strap 17 shown in Figure 1 that extends from the lateral heel side to the medial toe side); a second portion extending through the channel (portion of 17 that is located in channel 22); third portion extending in a rearward direction transversely across the instep from the first side to the second side (that portion of the strap that extends from the lateral side of the toe to the medial side of the heel in Figure 1); the first and third portions forming an X-configuration over the instep (See Figure 1); a fastener 26 attached to the strap.

9. Claims 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Saltsman 4,817,302. Saltsman '302 discloses all the limitations of the claims including the following: a sole 1-3 having a midfoot portion and a heel portion; a channel (that area where strap 5 enters through the inner sole between slots 5) extending transversely across the midfoot portion of the sole; an instep strap 11 connected to the heel portion of the sole (through supports 12); the strap having a first portion extending in a forward direction transversely across a wearer's instep from one side to the other (that portion shown in Figure 1 that extends from the medial side of the sole (the lower side with loop 10 and strap 12 marked) to the lateral side (top of Figure) of the sole at position 5); a second portion extending through the channel and slideable within (see portion in dashed lines. Slideable within especially with cover 8. See col. 3, lines 20-22); a third portion of the strap extending in a rearward direction transversely across the wearer's instep from one side to the other (that portion of the strap that extends

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from the medial instep side to the lateral heel side marked by 10 in the upper portion of Figure 1); the strap forming an X-configuration over the user's instep (See Figure 1); adjustable fastener 9 attached to the strap for adjusting the strap; strap system having a heel portion (that located between the portions marked 10 in Figure 1).

10. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Smith 2,259,273. Smith '273 discloses all the limitations of the claim including the following: a sole 5, 6 and 8; a channel (that formed between slots 26 where strap portion 21 is located) extending transversely across the midfoot portion of the sole (see Figure 2); an instep strap 2 connected to the heel portion of the sole (through supports at 20); the strap having a first portion extending in a forward direction transversely across a wearer's instep from one side to the other (that portion shown in Figure 1 that extends from the medial side of the sole at the heel to the lateral side of the sole at the toe); a second portion extending through the channel and slideable within (see portion 21 in dashed lines); a third portion of the strap extending in a rearward direction transversely across the wearer's instep from one side to the other (that portion of the strap that extends from the medial toe side to the lateral heel side in Figure 2); the strap forming an X-configuration over the user's instep (See Figures 1 and 2); adjustable fastener (buckle 25) attached to the strap for adjusting the strap; strap system having a heel portion 24.

***Allowable Subject Matter***

11. Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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*Conclusion*

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Tuesday through Friday from 8:30 am until 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

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Informal Fax for 3728

(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line  
Internet PTO-Home Page

1-800-786-9199  
<http://www.uspto.gov/>



Anthony D Stashick  
Primary Examiner  
Art Unit 3728

ADS  
August 20, 2002